after the court having found grounds for forfeiture has pronounced judgment of ouster, the ousted officer is re-elected to the same office. If the re-election is to a subsequent term, the wrongful acts for which he was previously expelled cannot be made the basis for a second removal. Indeed, though it would seem that re-election should be no condonation, the weight of authority is that wrongful acts, though not resulting in removal, committed in a previous term can never thereafter be a ground for removal.[3] The effect, after judgment of ouster, of a re-election to the same term has recently been squarely presented for the first time. *State* v. *Rose*, 86 Pac. Rep. 296 (Kan.). The holding here was that, at all events, if the ouster expressly excluded the defendant for the remainder of the two-year term, any assumption of the duties of the office under the new election was a contempt of court. The theory of the court was that the two-year term was an entity, and that once the entity had been adjudged forfeit and had been wrested from the incumbent, nothing could restore it. The fallacy in this view seems to be that it overlooked the fact that any election is but a conferring of authority for a stated period, subject to defeasance if certain conditions subsequent happen. In the case at hand, the original authority was cut short by the court; but in doing this the court had exhausted its power. It had not been given the further right to disqualify.[4] The whole conception of a two-year term as necessarily a unit is artificial, though doubtless useful in many cases. A re-election during its continuance, though popularly said to be "to fill the unexpired term," is, after all, to fill a new term, which happens to have the same farther limit as the old. A term is thus really a tenure, and though the old tenure be ended by the ouster, there is nothing to prevent a new conferring of authority upon the same individual. The old term, to be sure, may be dead; but on its death a new one arises. The reasoning of the court would lead to the result that as we must look at the object — the office — rather than at the subject — the office-holder, — the former is, when taken from the latter, utterly gone, not only as against him, but as against the whole world, until the term comes to its appointed end. The court could properly do no more than oust the officer for what he had done, relying on the good sense of the voters not to re-elect him.[5] The attempt to do more, being an abridgment of the people's right of free choice, was beyond the power of the court; and the officer could not be in contempt for disobeying the invalid order. Indeed, it may be said that strictly he was not disobedient at all, since it was not the old term which he entered upon, but an entirely new thing. The result reached by the case is eminently desirable; but it should rather be achieved by the legislature, which alone has the power to annex a penalty of disqualification for misfeasance by municipal officers.[6]

INTERRUPTION OF THE ADVERSE ENJOYMENT OF EASEMENTS. — It is commonly said that the adverse enjoyment of easements which begets title

[3] Speed *v.* Common Council of Detroit, 98 Mich. 360. But see State *v.* Welsh, 109 Ia. 19.

[4] See State *ex rel.* Tyrrell *v.* Common Council of Jersey City, 25 N. J. L. 536, where *mandamus* was granted to compel a common council which had expelled the relator to take him back after an election to fill the vacancy.

[5] State *ex rel.* Tyrrell *v.* Common Council of Jersey City, *supra*.

[6] *Cf.* State *ex rel.* Childs *v.* Dart, 57 Minn. 261, on which the Kansas court relies. That was a case of reappointment, but the same rule should apply.

must be "continuous" and "uninterrupted"; yet little difference appears in the use of the two terms by text-writers.[1] Indeed, if applied to the adverse possession of land, the only distinction between them may well be that the one connotes a user not voluntarily, the other not involuntarily, broken.[2] But when applied to the adverse enjoyment of incorporeal hereditaments, especially easements, the idea that non-acquiescence, affirmatively proved, rebuts the entirely fictitious legal presumption of a lost grant necessary for title by prescription,[3] seems to have given "uninterrupted" an entirely distinct meaning.[4] Adverse enjoyment is "continuous" if, in fact, exercised throughout a period of time; it is "uninterrupted" if the person whose rights are infringed has in no sufficient manner asserted the wrongness of the use. The one requirement prescribes the character of the use itself; the other concerns the attitude, position, or actions of the injured person. This conception of an interruption as any act legally proving non-acquiescence in the wrongful use seems to furnish the key to the decisions both upon what acts constitute interruptions and upon who can interrupt. All jurisdictions would probably agree that acts physically obstructing the adverse use [5] or suits successfully prosecuted to judgments [6] are valid interruptions; and many courts hold the mere institution of suit,[7] or even verbal denials of right or prohibitions of the user,[8] sufficient. The position of the latter courts is evidently tenable only upon the theory that an "interruption," in essence, is a protest against a wrongful use; for mere words in no real sense break the continuity of adverse user. The difference in decision is due, then, merely to a natural difference in opinion as to what acts public policy demands as proper methods of showing non-acquiescence in the adverse enjoyment.

The true nature of an interruption, however, is perhaps best tested by considering who can interrupt. Under the distinction above taken, although the requisite "continuity" may be lacking either because the adverse user has been voluntarily abandoned or because it has been prevented for some considerable time by any person or event whatsoever, yet an "interruption" can be made only by the person in violation of whose rights the user is exercised. Accordingly it has been held that a stranger cannot interrupt.[9] Similarly this principle seems to furnish the solution of an apparently more perplexing case. A suit brought by a tenant for years for infringement of an easement appurtenant was held not to interrupt the running of the prescriptive period against the owner of the fee. *Goldstrom* v. *Interborough, etc., Co.*, 36 N. Y. L. J. 489 (N. Y., App. Div., Nov., 1906). It will be borne in mind that both at common law [10] and by the express provisions of the New York code [11] the owner of the particular estate and the owner of

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1 See Gale, Easements, 7 ed., 165, 205; Washburn, Easements and Servitudes, 4 ed., 167-170. *Cf.* Goddard, Easements, 6 ed., 262.

2 See Washburn, Real Prop., 6 ed., §§ 1970, 1971. *Cf.* Goddard, Easements, *supra.*

3 See Tracy *v.* Atherton, 36 Vt. 503.

4 Alta, etc., Co. *v.* Hancock, 85 Cal. 219. See also Workman *v.* Curran, 89 Pa. St. 226, 230.

5 Brayden *v.* New York, etc., Co., 172 Mass. 225.

6 Harmon *v.* Carter, 59 S. W. Rep. 656 (Tenn.).

7 Workman *v.* Curran, *supra.*

8 Chicago, etc., Co. *v.* Hoag, 90 Ill. 339. *Contra*, Lehigh, etc., Co. *v.* McFarlan, 43 N. J. L. 605.

9 McIntire *v.* Talbot, 62 Me. 312.

10 Jesser *v.* Gifford, 4 Burr. 2141. See also Angell, Adverse Enjoyment, 60-62.

11 N. Y. Code of Civil Procedure, § 1665.

the future estate in land have immediate and co-existent rights of action for infringements of the easements appurtenant, if damage has already been done thereby to each estate; and that under the New York decisions such damage has occurred in cases like the present, where the easement is impaired by an apparently permanent structure built after the creation of the particular estate.[12] From the application to these premises of the doctrine of "interruption" herein advocated, the recent decision obviously follows; for, as the tenant's inaction cannot affect the landlord's rights,[13] so, conversely, his objection to the infringement of his own right can in no way show non-acquiescence by the landlord in the impairment of the latter's co-existent but independent right to have the same easement undisturbed. In England, however, the Prescription Act[14] seems to have so altered the common law conception of an "interruption"[15] that thereunder even a stranger may interrupt,[16] and a tenant's interruption would consequently conduce to the benefit of the landlord.[17]

ATTACHMENT OF ROLLING STOCK AND GARNISHMENT OF CARRIERS IN RELATION TO INTERSTATE COMMERCE. — If a state law amounts to a regulation of interstate commerce, and certainly if this regulation is contrary to the intent of Congress express or implied, the law is unconstitutional.[1] Under this principle a state law was recently held invalid in so far as it authorized the attachment of the rolling stock of a non-resident carrier and the garnishment of connecting carriers owing freight collections to the non-resident carrier. *Davis* v. *Cleveland, etc., Ry. Co.*, 146 Fed. Rep. 403 (Circ. Ct., N. D. Ia., W. D.). The cars attached were in the hands of the garnishees under the usual agreement to forward them to the destination of the freight and return them later to the owner. The court followed the only other cases which have considered the attachment law in relation to interstate commerce.[2] With one exception,[3] these cases do not expressly suggest that a domestic attachment of cars running on their own line would be unconstitutional though the cars were engaged in interstate business. They jump to a consideration of the extra burden upon the defendant of meeting a suit in a foreign jurisdiction, and the burden upon the garnisheed connecting carriers, with consequent discouraging effect upon the forwarding agreement, finding that the whole proceeding is contrary to the intent of Congress expressed in the statute[4] authorizing carriers in different states to arrange for continuous carriage.

This reasoning proceeds upon an infirm distinction. The line should be drawn not between the attachment of the cars of a resident or non-resident carrier, but between an attachment which directly prevents the delivery of in-

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[12] See Thompson *v.* Manhattan Ry, Co., 130 N. Y. 360. See, also, Storms *v.* Manhattan Ry. Co., 178 N. Y. 493, and cases cited.

[13] See Angell, Adverse Enjoyment, 46–60.

[14] 2 & 3 Wm. IV, c. 71.

[15] See Goddard, Easements, 6 ed., 266–270.

[16] Davies *v.* Williams, 16 Q. B. 546.

[17] See Clayton *v.* Corby, 2 G. & D. 174, 182.

[1] See Cooley *v.* The Board of Wardens, 12 How. (U. S.) 299.

[2] See Michigan Central Ry. Co. *v.* Chicago, etc., Ry. Co., 1 Ill. App. 399; Wall *v.* N. & W. R. R. Co., 52 W. Va. 485; Connery *v.* Quincy, etc., Ry. Co., 92 Minn. 20.

[3] See Wall *v.* N. & W. R. R., *supra.*

[4] U. S. Rev. Stat. § 5258.